

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**BRIAN L BANKS**  
Claimant

**APPEAL NO. 14A-UI-06227-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CENTRAL IOWA HOSPITAL CORP**  
Employer

**OC: 05/25/14  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 13, 2014 (reference 02) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on July 10, 2014. The claimant did participate. The employer did not participate.

**ISSUE:**

Was the claimant discharged due to job-connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a central service technician beginning in September 2010 through May 23, 2014, when he discharged. A few years prior to his discharge, the claimant and other operating room supply technicians were notified that they would be required to become certified. This would require they each pass two tests. The employer delayed in getting the study materials to the claimant so that he would have adequate time to prepare for the examinations. The claimant performed to the best of his ability but was unable to pass the state portion of the certification examination. When he failed the certification examination, he was discharged. The claimant knew that his continued employment was based upon him passing the certified examination. The only reason the claimant was discharged was due to his failure to pass the examination.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. IDJS*, 386 N.W.2d 552 (Iowa App. 1986).

A failure to successfully complete required course work is not evidence of misconduct where there is an attempt in good faith to satisfy the requirements. *Holt v. Iowa Dep't of Job Serv.*, 318 N.W.2d 28 (Iowa Ct. App. 1982).

The claimant attempted to pass the certification examination but was unable to do so. Under these circumstances his failure to pass the examination was due to inability, not intentional conduct. As such, the evidence does not establish intentional substantial misconduct sufficient to disqualify the claimant from receipt of unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The June 13, 2014 (reference 02) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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